

House Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

**CHAPTER 30**

**HOUSE BILL 2159**

**AN ACT**

**AMENDING SECTIONS 44-1823, 44-1825, 44-2004, 44-2011, 44-2037 AND 44-2038,  
ARIZONA REVISED STATUTES; RELATING TO SALES OF SECURITIES.**

**(TEXT OF BILL BEGINS ON NEXT PAGE)**

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-1823, Arizona Revised Statutes, is amended to  
3 read:

4 44-1823. Power to require testimony and production of records;  
5 order of nondisclosure; applicability

6 A. For the purpose of investigations or hearings which, in the opinion  
7 of the commission, are necessary and proper for the enforcement of this  
8 chapter, any member of the commission, the director or any officer or  
9 officers designated by the commission may administer oaths and affirmations,  
10 subpoena witnesses, take evidence and require by subpoena duces tecum or by  
11 citation the production of books, papers, contracts, agreements or other  
12 documents, records or information, whether filed or kept in original form or  
13 electronically stored or recorded which the commission deems relevant or  
14 material to the inquiry.

15 B. The commission may issue and apply to enforce a subpoena in this  
16 state at the request of a securities agency or administrator of another state  
17 if the activities constituting an alleged violation for which the information  
18 is sought would be a violation of this chapter if the activities had occurred  
19 in this state.

20 C. IN CONNECTION WITH THE POWER TO ENFORCE THE PRODUCTION OF EVIDENCE  
21 BY SUBPOENA VESTED IN THE COMMISSION BY ARTICLE 15 OF THE CONSTITUTION OF  
22 ARIZONA AND THE COMMISSION'S POWER TO CONDUCT PRIVATE INVESTIGATIONS PURSUANT  
23 TO SECTION 44-1822, THE COMMISSION HAS THE AUTHORITY TO ORDER A FINANCIAL  
24 INSTITUTION NOT TO DISCLOSE THE EXISTENCE OR CONTENT OF THE SUBPOENA TO  
25 PERSONS NOT AFFILIATED WITH THE FINANCIAL INSTITUTION OTHER THAN TO THE  
26 FINANCIAL INSTITUTION'S LEGAL COUNSEL. THE COMMISSION SHALL EXERCISE SUCH  
27 POWER IF THE COMMISSION FINDS IT NECESSARY OR APPROPRIATE IN THE PUBLIC  
28 INTEREST OR FOR THE PROTECTION OF INVESTORS.

29 Sec. 2. Section 44-1825, Arizona Revised Statutes, is amended to read:

30 44-1825. Contempt; penalty

31 A. In case of contumacy or refusal to obey a subpoena or citation  
32 issued by the commission, any member of the commission, the director or any  
33 officer designated by the commission, the superior court of IN Maricopa  
34 county, on application by the commission, shall issue to the person an order  
35 requiring the person to appear before the commission, the director, or the  
36 officer designated by the commission, there to produce documentary evidence  
37 if so ordered and to give evidence touching the matter under investigation  
38 or in question. Failure to obey the order of the court may be punished by  
39 the court as a contempt of court.

40 B. IN THE CASE OF WILFUL NONCOMPLIANCE WITH A NONDISCLOSURE ORDER  
41 INCLUDED IN A SUBPOENA ISSUED PURSUANT TO SECTION 44-1823, ON APPLICATION BY  
42 THE COMMISSION, THE SUPERIOR COURT IN MARICOPA COUNTY MAY EXERCISE ITS  
43 CONTEMPT POWERS. FOR THE PURPOSES OF THIS SUBSECTION, "WILFUL" HAS THE SAME  
44 MEANING AS THAT PRESCRIBED TO WILFULLY IN SECTION 1-215.

1       B. C. The court shall award reasonable expenses, including attorney  
2 fees, to the commission if the refusal to obey a subpoena or citation issued  
3 by the commission was not substantially justified, unless other circumstances  
4 make an award of expenses unjust.

5       C. D. Process in any proceeding pursuant to this section may be  
6 served on the defendant in any county of this state in which the defendant  
7 transacts business or is found.

8       D. E. Any expenses, including attorney fees, collected pursuant to  
9 this section shall be deposited, pursuant to sections 35-146 and 35-147, in  
10 the state general fund.

11       Sec. 3. Section 44-2004, Arizona Revised Statutes, is amended to read:

12       44-2004. Limitation of civil actions

13       A. No civil action shall be maintained under this article to enforce  
14 any liability based on a violation of section 44-1841 or 44-1842 unless  
15 brought within one year after the violation occurs.

16       B. Except as provided in subsection C of this section, no civil action  
17 shall be brought under this article to enforce any liability based on a  
18 violation of article 13 of this chapter unless brought within two years after  
19 discovery of the fraudulent practice on which the liability is based, or  
20 after the discovery should have been made by the exercise of reasonable  
21 diligence.

22       C. No civil action shall be brought under this article to enforce any  
23 liability based on a violation of section 44-1997 or 44-1998 unless brought  
24 within ~~one year~~ TWO YEARS after the discovery of the untrue statement or the  
25 omission or ~~after the discovery should have been made by the exercise of~~  
26 ~~reasonable diligence.~~ No action shall be brought to enforce a liability  
27 created under section 44-1997 more than three FIVE years after a bona fide  
28 offer of the security to the public or under section 44-1998 more than three  
29 FIVE years after the sale of the security.

30       Sec. 4. Section 44-2011, Arizona Revised Statutes, is amended to read:

31       44-2011. Complaint for appointment of conservator or receiver

32       ~~The provisions of section 44-2032, paragraph 4 are applicable when IF~~  
33 an act, practice or transaction constituting a violation of section 44-1841  
34 or 44-1842 or article 13 of this chapter is alleged in a complaint filed by  
35 this state ~~at the relation of the attorney general~~ OR ANY AGENCY OF THIS  
36 STATE, THE COMMISSION MAY PETITION THE SUPERIOR COURT IN MARICOPA COUNTY FOR  
37 THE APPOINTMENT OF A CONSERVATOR TO REORGANIZE THE AFFAIRS OF, OR A RECEIVER  
38 TO WIND UP THE AFFAIRS OF, THE VIOLATOR. THE COMMISSION MAY ALSO TRANSMIT  
39 ANY EVIDENCE IT HAS AVAILABLE CONCERNING THE ACT, PRACTICE OR TRANSACTION TO  
40 THE ATTORNEY GENERAL. ON RECEIPT OF THE EVIDENCE, THE ATTORNEY GENERAL MAY  
41 PETITION THE SUPERIOR COURT IN MARICOPA COUNTY FOR THE APPOINTMENT OF A  
42 CONSERVATOR TO REORGANIZE THE AFFAIRS OF, OR A RECEIVER TO WIND UP THE  
43 AFFAIRS OF, THE VIOLATOR. PROCESS IN ACTIONS FILED PURSUANT TO THIS SECTION  
44 MAY BE SERVED ON THE DEFENDANT IN ANY COUNTY IN THIS STATE IN WHICH THE  
45 DEFENDANT TRANSACTS BUSINESS OR IS FOUND.

1       Sec. 5. Section 44-2037, Arizona Revised Statutes, is amended to read:  
2       44-2037. Civil penalties

3       A. A person who, in a civil proceeding, is found to have violated any  
4 provision of this chapter or any rule or order of the commission shall pay  
5 a civil penalty in an amount of not to exceed five thousand dollars for each  
6 violation.

7       B. ~~On request by~~ The commission, OR the attorney general AT THE  
8 COMMISSION'S REQUEST, may bring an action in Maricopa county in the same  
9 manner as the filing of other such actions. On the finding of a violation  
10 of this chapter or any rule or order of the commission by the defendant in  
11 any such action, the court may impose the civil penalty provided by this  
12 section in an amount it deems appropriate for each such violation. Nothing  
13 in this section shall be construed to limit the right of a party in an action  
14 under this section to a trial by jury.

15       C. If an administrative penalty has been imposed pursuant to section  
16 44-2036 for violation of the same provision, rule or order arising out of the  
17 same circumstances and has been paid by the person against whom the civil  
18 penalty is imposed, the court shall reduce the civil penalty by the amount  
19 of the administrative penalty paid.

20       D. A person who violates any order or injunction issued by a court of  
21 competent jurisdiction pursuant to this chapter, in addition to any other  
22 penalty or remedy for contempt of court, shall pay to this state a civil  
23 penalty of not more than twenty thousand dollars for each violation as the  
24 court deems just and proper. For the purpose of this section, the superior  
25 court issuing any order or injunction shall retain jurisdiction and the cause  
26 shall be continued. The COMMISSION OR THE attorney general acting in the  
27 name of this state may petition for recovery of civil penalties pursuant to  
28 this section.

29       Sec. 6. Section 44-2038, Arizona Revised Statutes, is amended to read:  
30       44-2038. Costs recoverable

31       In an action brought under the provisions of this article, the  
32 COMMISSION OR THE attorney general is entitled to recover costs, which in the  
33 discretion of the court may include an amount representing reasonable  
34 attorney fees and investigative expenses for the services rendered, for the  
35 use of this state.

APPROVED BY THE GOVERNOR APRIL 7, 2003:

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2003.

Passed the House February 17, 2003,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate April 1, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Blumenthal  
President of the Senate

Charmian Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:40 o'clock P. M.

Sandra Carey  
Secretary to the Governor

Approved this 7 day of

April, 2003,

at 2<sup>30</sup> o'clock P. M.

J. T. Apple  
Governor of Arizona

H.B. 2159

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2003

at 4:27 o'clock P. M.

Janice K. Brewer  
Secretary of State